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May 21, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CHRISTINE TODD WHITMAN
Governor

Paul H. Zoubek
Acting Attorney General

JEFFREY J. MILLER
Assistant Attorney General
Director

Honorable Magalie Roman Salas, Secretary
Federal Communications Commission
445-12th Street, S.W.
Washington, DC 20554

Re: I/M/O Petition of Global NAPS, Inc. for Preemption of
Jurisdiction of the New Jersey Board of
Public Utilities Pursuant to Section 252(e)(5) of the
Communications Act
CC Docket No 99-154

Dear Secretary Salas:


Enclosed please find an original and five (5) copies of
a Comments of the New Jersey Board of Public Utilities in
response to the above-referenced matter.

Please file-stamp one copy and return it to me in the
enclosed envelope.

Very truly yours,

PAUL H. ZOUBEK
ACTING ATTORNEY GENERAL
OF NEW JERSEY

By:


Eugene P. Provost
Deputy Attorney General

c: Herbert H. Tate, President
Carmen J. Armenti, Commissioner
Frederick F. Butler, Commissioner
Mark W. Musser, Secretary
Christopher W. Savage, Esq.
Anthony Centrella

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of:)
)
Petition of Global NAPS, Inc. for)
Preemption of Jurisdiction of the) CC Docket No 99-154
New Jersey Board of Public Utilities)
Pursuant to Section 252(e)(5) of the)
Communications Act)

COMMENTS
OF THE
NEW JERSEY BOARD OF PUBLIC UTILITIES

Pursuant to the Order of the Federal Communications Commission (Commission) released May 7, 1999 in the above referenced matter¹, the New Jersey Board of Public Utilities (Board) herewith files its comments. For the reasons that follow, the Board respectfully submits that in all material respects, it has complied with the requirements of the Telecommunications Act of 1996 and that the Commission should deny the petition of Global NAPS, Inc. for preemption of the Board's jurisdiction. In the alternative, The Board respectfully submits that the Commission should hold in abeyance any decision in this matter to allow the Board to conclude its deliberations and issue its decision.

By way of background in this matter, upon receipt of the June 30, 1998 Global NAPS Petition for Arbitration, the Board assigned an arbitrator, and a decision was rendered on October 26, 1998. The Board's arbitration guidelines required the parties to the Global NAPS/BA-NJ arbitration then submit to the Board for its review within five (5) business days an interconnection agreement which incorporated the arbitrator's decision.² When the parties failed to timely file, the Board's Secretary notified them of their failure and reminded them of their

¹ See Petition of Global NAPS, Inc. for Preemption of Jurisdiction of the New Jersey Board of Public Utilities Pursuant to Section 252(e)(5) of the Communications Act, CC Docket No 99-154, DA No. 99-884 (May 7, 1999).

² Petition of Global NAPS, supra, ¶4.

obligation under the Board's guidelines.³ What followed instead was the submission of opposing motions, responses and proposed agreements in early November and December, 1998,

A confounding factor was the ongoing nationwide controversy regarding reciprocal compensation. The issue of whether a local exchange carrier (LEC) is entitled to receive reciprocal compensation from incumbent local exchange carriers (ILECs) for traffic that it delivers to an information service provider, particularly an Internet service provider (ISP), has been the subject of much controversy due to the enormous growth in Internet usage in the United States. As early as July 1997, the Commission sought comments on a request by the Association for Local Telecommunications Services for clarification of the Commission's reciprocal compensation rules.⁴ Just four (4) days after the issuance of the arbitrator's decision in the Global NAPS/BA-NJ arbitration, the Commission issued its Memorandum Opinion and Order in I/M/O GTE Telephone Operating Cos.⁵ In GTE Telephone Operating Cos., the Commission concluded an investigation of a new access offering filed by GTE which permitted Internet service providers to provide their end users high speed access to the Internet. The Order expressly stated that it did not address issues regarding reciprocal compensation for LECs when they deliver traffic to ISPs, but did state that it intended "in the next week to issue a separate order specifically addressing reciprocal compensation issues."⁶

Thus, following the issuance of the arbitrator's decision, the Board not only was in the process of receiving and reviewing numerous filings by the parties to the arbitration, but was led to believe that the Commission itself was about to speak on the most significant issue in dispute between the parties. That Commission decision ultimately was issued on February 26, 1999, less than 90 days ago. In its Declaratory Ruling in CC Docket No. 96-98, the Commission concluded that "ISP-bound traffic is jurisdictionally mixed and appears to be largely interstate."⁷

³ See letter to BA-NJ and to Global NAPS from Mark W. Musser, Board Secretary, dated November 4, 1998 and included in the Exhibits to the Petition of Global NAPS in this docket.

⁴ See CCB/CPD 97-30, DA 97-1399 (rel. July 2, 1997).

⁵ Memorandum Opinion and Order in I/M/O GTE Telephone Operating Cos., et al., CC Docket No. 98-79, FCC 98-292 (rel October 30, 1998).

⁶ I/M/O GTE Telephone Operating Cos., *supra*, ¶¶1-2.

⁷ Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, I/M/O Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996, I/M/O Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98 and 99-68, FCC 99-38 (rel. February 26, 1999), ¶1. The Declaratory Ruling is presently being challenged by both ILECs and competitive LECs in the United States Court of Appeals, District of Columbia Circuit.

However, the Commission made clear that, in the absence of a federal rule regarding the appropriate inter-carrier compensation for this traffic, state commissions are left to determine the compensation mechanism which is appropriate for ISP-bound traffic.⁸

Thus, the delay about which Global NAPS complains is due, not to any neglect of the Board's responsibilities to act, but rather to a desire to act prudently in light of the changing law related to the central issue about which the parties to the arbitration could not agree, namely, reciprocal compensation for local exchange carriers which handle ISP-bound traffic. The delay of the Board's decision in this matter is not unreasonable considering the lengthy and ongoing nature of the Commission's deliberations to resolve the underlying reciprocal compensation issue. With the Commission's recent Order now in hand, the Board expects to render a decision with respect to the Global NAPS/BA-NJ arbitration in the very near future, and respectfully requests that the Commission defer to the State by holding in abeyance any decision in the instant Petition for Preemption until the Board acts.


WHEREFORE, for the foregoing reasons, the Board respectfully requests that the FCC deny the petition of Global NAPS, Inc. for preemption, or, in the alternative hold in abeyance any decision in this matter to allow the Board to conclude its deliberations and issue its decision.

Respectfully submitted,

PAUL H. ZOUBEK
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OF NEW JERSEY

Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for the New Jersey
Board of Public Utilities

Dated: May 21, 1999 By:


Eugene P. Provost
Deputy Attorney General

PAUL H. ZOUBEK
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for the New Jersey Division
of Youth and Family Services

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MAY 24 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of:)
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Petition of Global NAPS, Inc. for)
Preemption of Jurisdiction of the) CC Docket No 99-154
New Jersey Board of Public Utilities)
Pursuant to Section 252(e)(5) of the) AFFIDAVIT OF SERVICE
Communications Act)

I, Audrey Costa, being of full age, deposes and says:

1. I am employed as a Legal Secretary in the Department of Law and Public Safety, Division of Law. In that capacity I am assigned to work with Deputy Attorney General Eugene P. Provost.

2. On May 21, 1999, I caused a copy of the foregoing comments of the New Jersey Board of Public Utilities in the above-referenced matter to be sent via United Parcel Service (UPS) Next Day Air mail, postage prepaid, to the following:

Ms. Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Ms. Janice Miles
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room S-325
Washington, D.C. 20554

Mr. Barry S. Abrams
Vice President, General Counsel & Secretary
Legal Department
Bell Atlantic-New Jersey
540 Broad Street, Room 2000
Newark, N.J. 07101


Christopher W. Savage, Esq.
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

I also caused a copy of the comments to be sent via first class mail to:

International Transcription Service, Inc. (ITS)
1231 20th Street, N.W.
Washington, D.C. 20036


Audrey Costa

Sworn to and subscribed
before me this 21st day
of May, 1999.


An Attorney-at-Law of
the State of New Jersey